TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1127.

THE UNITED STATES, APPELLANT,

vs.

SAMUEL G. LAWTON.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 12, 1883.

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1 I. *Petition.—Filed Jan'y* 31, 1883.

In the Court of Claims.

SAMUEL G. LAWTON }
vs. } No. 13419. Filed Jan'y 31, 1883.
THE UNITED STATES. }

To the honorable the judges of the said court:

Samuel G. Lawton respectfully showeth as follows:

I. Martha T. Lawton was, on the 5th day of August, 1861, and at the date of the sale hereinafter mentioned, the owner of a life estate, and Samuel G. Lawton of the remainder in a parcel of land, situated on Hilton Head Island, in St. Tueber Parish, of Beaufort County (then Beaufort district), of the State of South Carolina, and containing one thousand one hundred acres, more or less, and known as the Hill place.

II. By virtue of an act entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," approved August 5, 1861, and of an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," approved on the 7th of July, 1862, or one of
2 them, a tax to the United States of forty-four dollars ($44) was assessed against the said parcel of land. At the time of the sale hereinafter mentioned the sum of the said tax, the penalty and interest thereon, and all charges was one hundred and seventy dollars and fifty cents (170.50).

III. On or about the third day of March, A. D. 1863, the said parcel of land was sold in pursuance of the said acts, or one of them, or of the act of Feb. 6th, 1863, to satisfy the said tax and charges, and was bid off by the Commissioners for the United States, and was conveyed to the said United States.

IV. The said Hill place was devised by the last will and testament of James Honey, deceased, the maternal grandfather of claimant, to his executors in trust for Martha T. Barkerdale, the mother of claimant, for and during her natural life, and to her lawful issue living at the time of her death absolutely. That on the 12th day of April, A. D. 1880, the said Martha T., who previously thereto had intermarried with Jas. A. Lawton, esq., died, leaving the claimant her sole issue surviving her, and he is by virtue of the 36th section of said act, approved August 5th, 1861, entitled *te* receive from the United States nine hundred and twenty-nine dollars and fifty cents ($929.50), being the surplus of the said purchase-money over and above the sum of the said taxes and charges. The claimant made application for the said sum to the Secretary of the Treasury on the 8th day of May, A. D. 1882, and the Secretary of the Treasury has neglected or refused to grant the same. The said Marthy T. Lawton, the life-tenant, never made any application for said surplus proceeds of sale.

V. No assignment nor transfer of this claim has ever been made. The claimant is justly entitled to the sum claimed in this petition from
3 the United States, after allowing all just credits and set-offs; he is a citizen of the United States, and believes the facts stated in the petition to be true.

Wherefore the claimant prays judgment against the United States in the sum of nine hundred and twenty-nine dollars and fifty cents.

J. J. DARLINGTON,
WM. E. EARLE,
Solicitors for Claimant.

Personally appeared before me, Samuel G. Lawton, the above-named claimant, and made oath that the matters averred on his personal knowledge in the foregoing petition are true, and those stated upon information and belief he believed to be true.

S. G. LAWTON.

Sworn to before me this 22d day of January, A. D. 1883.
[NOTORIAL SEAL.] W. K. McKENZIE,
Notary Public.

4 II. *Traverse.—Filed Feb'y* 17, 1883.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

5 III. *Findings of fact and conclusion of law.*

SYLLABUS.

The claimant's grandfather, by will, in 1827, devised a tract of land in South Carolina to trustees for the benefit of his daughter, the claimant's mother, during her natural life, and upon her death, if she had lawful issue, her surviving, then to said issue in fee. During the lifetime of the mother the tract was sold by direct tax commissioners for non-payment of a tax due to the United States. The property was bid in by the United States for a sum greater than the aggregate of the tax, penalty, interest, and all costs and charges, but no money was paid. No demand was made on the Treasury for the surplus during the tenancy for life. On the death of the testator's daughter the claimant, being the sole surviving lawful issue of the daughter, demanded it.

Held:

That under the provisions of the act of August 5, 1861, 12 Stat. L., 292, the surplus can be recovered back;

That the executors of the will as trustees were created tenants for the life of the testator's daughter, with remainder over to such of her lawful issue as should be living at the time of her death;

That the right to the surplus followed the disposition of the land.

FINDINGS OF FACT.

The Court of Claims, having considered this case, on the evidence finds the facts to be as follows:

I.

On the 10th day of February, 1827, James Stoney, of Hilton Head Island, in South Carolina, died, leaving a last will and testament, which was duly proved, and of which the following is an extract:

"The other equal part or share of my personal property, charged and chargeable with the payment of half of the said annuity to my beloved wife, Elizabeth, together with all of the lands I possess on the south side of Broad Creek on the Island of Hilton Head, I give and devise unto such person or persons as I shall hereafter appoint my executor or executors, to and to the use of them or him, my executor or executors, their heirs, executors, & assigns, upon the trust nevertheless, and to & for the intent & purpose hereinafter expressed and declared of and concerning the same. That is to say, upon trust for the sole benefit of my beloved daughter, Martha S. Barksdale, for and during her natural life, free, and free from the debts, contracts, and engagements of any husband to whom she may be allied, or the intentions or claims of his creditors; and upon the death of my said daughter, Martha S. Barksdale, it is my will, intention, and desire that the trusteeship above created in executor or executors over the said part of my real and personal property shall immediately dissolve and expire; and if my said daughter, Martha S. Barksdale, shall have any lawful issue living at the time of her death then, I give and devise the said part of my real and personal property to such issue, him, her, or them, and their heirs forever."

A tract of land known as the Hill place, in St. Luke's Parish, South Carolina, was a part of the estate so devised.

6 II.

The said Martha S. Barksdale, named in said will, entered into possession of said last-named tract of land under said devise, and continued in possession of the same until dispossessed thereof by the tax sale hereinafter set forth. After the making of the said will she was lawfully married to one Joseph A. Lawton. The claimant, Samuel G. Lawton, who is now forty-one years of age, is the lawful and only living issue of the said Martha S. Barksdale.

III.

On the 25th day of November, 1862, the direct-tax commissioners of the United States assessed a direct tax upon the said Hill place, amounting to $88. On the 1st day of December, 1873, the said Hill place was sold for non-payment of the said tax. The amount of the taxes, penalty, interest, and costs was $170.50. The property was struck off for the United States by the tax commissioners for the sum of $1,100, and tax certificate No. 207 was issued therefor, and is now on file in the office of the Commissioner of Internal Revenue, but no money was paid therefor, the tax commissioner having bid in the property for the United States.

IV.

The Board of tax commissioners entered upon and took possession of the land in the name of the United States, and from time to time leased the same. The amount realized from such leasing does not appear. The United States are still in possession of fifty acres; the remainder was sold at public sale on the 31st December, 1875, for $130, under the provisions of the act of June 8, 1872. No application under the act of 1872, and the supplements thereto, for redemption of this property was ever made.

V.

It does not appear that the claimant ever parted with his interest in the remainder of said tract, except as dispossessed by said tax-sale, or that he ever assigned his right to receive the surplus remaining from the purchase-money.

VI.

The said Martha S. Lawton died on the 12th day of April, 1880. It does not appear that during her life-time any demand was made upon the Treasury for the said surplus. On the 8th day of May, 1882, the claimant applied to the Secretary of the Treasury for any surplus proceeds of said sale which might be in the Treasury, and no action was taken thereon; and nothing has been paid to the claimant on such application.

CONCLUSION OF LAW.

On the foregoing facts the court decides as conclusion of law that the claimant is entitled to recover of the defendants the sum of $929.50.

IV. *Opinion of the Court.*

DAVIS, *J.*, delivered the following opinion of the court:

In Irene Taylor's administrator's case, 14 C. Cls. R., 339, we decided that when a sale of real estate was made by direct-tax commission-
7 ers to a third party, for non-payment of a tax due to the United States under the act of June 7, 1862 (12 Stat. L., 422), and a surplus of the purchase-money remained after satisfaction of the tax and all costs and charges, and that surplus was paid into the Treasury, the owner of the real estate, or his legal representatives, could demand the same of the Secretary of the Treasury under the provisions of the act of August 5, 1861 (12 Stat. L., 292); and that if payment should be refused, an action could be maintained therefor in this court, as upon an implied contract to pay it over to such owner or representative.

We also held that under the act of 1861 the statute of limitations did not begin to run against the owner of such surplus, or his representatives, until demand made at the Treasury for it and refusal to pay.

On both these points the Supreme Court on appeal sustained this court. United States v. Taylor, 104 U. S., 21.

The present case differs from Taylor's case in this, that the real estate was bought in by the tax commissioners for the United States and no actual money was paid.

In their opinion in Taylor's case the Supreme Court said:

"The commissioners, in case of the non-payment of the tax, penalty, and charges, were required to sell the lands at public sale to the highest bidder for a sum not less than the amount of the tax, penalty, &c., and, if no person bid more, then to strike off and sell them to the United States for that sum. In case the United States became the buyer, there was, of course, no surplus."

In consequence of this expression, the Government contends that the Supreme Court holds that in case of a purchase by the United States there can in no event be a surplus to be paid to the owner or to go into the Treasury.

If this be so, it disposes of this case. But an examination of the language of the Supreme Court, and of the terms of the 7th section of the act of 1862; to which it refers, shows that that court, in saying that there would be no surplus in case of a purchase by the United States, referred only to a sale under the provisions of the seventh section. Those provisions are as follows:

"And the said commissioners shall, at said sale, strike off the same to the United States at that sum (i. e. a sum not less than the taxes, penalty, and costs, and ten per centum per annum interest on said tax) unless some person shall bid the same or a larger sum."

It is mathematically true that there can be no surplus for the owner when the property sells for just the taxes, penalty, interest, and costs for which it is responsible; and that is all the Supreme Court say in Taylor's case.

In the present case, however, the property sold for $929.50 surplus above the sum of the taxes, penalty, costs, and interest on the tax, but no money was paid.

The act of 1862, under which the sale was made, contained no authority for a purchase by the United States except the one cited above; and as the purchase was not made under that authority, but under the authority derived from the act of Feb. 6, 1863, 12 Stat. L., 640, it follows that the United States became a general competitor at the vendue, like any other bidder, and obtained the property as such. We think this fact imposed upon the Government the same obligations and duties towards the owner which it would have incurred had the property been struck off to a stranger.

Had a stranger been the purchaser the United States would have been bound, out of the money received from the sale, to satisfy the tax, costs, penalty, and interest; and then to pay the surplus to the owner or his legal representatives; or if he or they could not be found, or
8 should refuse to receive the same, then to pay it into the Treasury.

As they were themselves the purchasers, their officers did not go through the form of paying the money; but their books ought to show and one of their courts ought, in common justice, to assume that their books do show, that they acquired this property by the use of money taken from their Treasury and applied, partly to the payment of their own taxes, penalty, and interest, partly to the expenses of collecting the amounts due them, and that the remainder is held by them as custodians for the persons lawfully entitled to demand it as owners of the property sold. It was made the duty of the defendants' officers to do this. In the absence of proof

to the contrary, it is a legal presumption that they performed their duty. Crussell's case, 7 C. Cls. R., 276.

In Taylor's case the Supreme Court say of these acts:

"The act provided for the collection of direct taxes in insurrectionary districts. It was not a confiscation act. * * * A construction consistent with good faith should be given to these statutes. It would certainly not be fair dealing for the Government to say to the owner that the surplus proceeds should be held in the Treasury for an indefinite period for his use, or that of his legal representatives, and then, upon suit brought to recover them, to plead in bar that the demand therefor had not been made within six years."

Similar equitable considerations are applicable to the present case. It would be inequitable to hold that the officers of the United States can, by over-bidding strangers at the sale, prevent the owner from receiving the surplus to which he would otherwise be clearly entitled under the statute.

The counsel for the defendants further calls attention to the fact that the Government took possession of these lands in that part of South Carolina and leased a part of them, and sold all but fifty acres of the tract now in question.

This was in part done by the authority conferred by Congress in the eleventh section of the act of 1862; and this court has already held in Taylor's case, and the Supreme Court has sustained us, that proceedings under section 7 are not affected by the subsequent grants of power in sections 9, 10, 11, and 12. The tax sale which is now under consideration, and others like it, were considered by Congress in 1866. Any defects there may have been in the proceedings for want of power were then cured. All steps outside of previous statutes were ratified by the act of July 16, 1866 (14 Stat. L., 173). The sixth section of this act recites that those properties in the parishes of Saint Helena and Saint Luke had been bid in by the United States at tax sales, and approves the setting apart of certain portions of the same by the tax commissioners for the benefit of the freedmen. That section and the remaining sections of the act further make provision for disposing of the remainder of these lands. This removes any doubt there may have been as to the power of the tax commissioners to bid in the property at the sale at a price above the tax, penalty, interest, and costs, and fixes, if it had not been fixed before, the liability of the defendants, under the act of 1861, to account for the surplus.

The claimant has made his demand at the Treasury in due form for this surplus, and has been refused. It only remains to consider whether he is the person entitled to the money.

The claimant's grandfather died in 1827, leaving a will by which he devised, among other property, the said tract (in the language of the will)—

"Unto such person or persons as I shall hereafter appoint my executor or executors to and to the use of them or him my executor or executors, their heirs, executors, & assigns, upon the trust nevertheless, and to
9 & for the intent & purpose hereinafter expressed and declared of and concerning the same. That is to say, upon trust for the sole benefit of my beloved daughter, Martha S. Barksdale, for and during her natural life, free, and free from the debts, contracts, and engagements of any husband to whom she may be allied, or the intentions or claims of his

creditors; and upon the death of my said daughter Martha S. Barksdale, it is my will, intention, and desire that the trusteeship above created in executor or executors over the said part of my real and personal property shall immediately dissolve and expire; and if my said daughter Martha S. Barksdale shall have any lawful issue living at the time of her death, then I give and devise the said part of my real and personal property to such issue, him, her, or them and their heirs forever."

The said Martha S. Barksdale was the mother of the claimant. She died in 1880, leaving the claimant her sole surviving lawful issue at the time of her death.

In our opinion the executors of the will as trustees were created tenants for the life of Mrs. Lawton, with remainder over to such of her lawful issue as should be living at the time of her death (Mendenhall v. Mower, 16 S. C. R., 303; Reeder v. Spearman, 6 Rich. Eq., 88; McCorkle v. Black, 7 Rich. Eq., 407); the right to the surplus followed the disposition of the land; and, the trustees having failed to demand it during the term of the life estate, the claimant as remainder man is entitled to it.

The judgment of the court is that the claimant do have and recover of the defendants the sum of nine hundred and twenty-nine dollars and fifty cents.

V. Final judgment.

At a Court of Claims held at the city of Washington, D. C., on the 21st day of May, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Samuel G. Lawton do have and recover of and from the United States the sum of nine hundred and twenty-nine $\frac{50}{100}$ dollars ($929.50).

10 *VI. Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 21st, day of May, 1883, in favor of claimant, the defendants, by their Attorney-General, on the 18th day of August, 1883, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed Aug. 18, 1883.

Allowed.

C. D. DRAKE, *Chief Justice.*

11 In the Court of Claims.

VII.

SAMUEL G. LAWTON
vs.
THE UNITED STATES. } No. 13419.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-

entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final judgment of the application of defendants for the allowance of an appeal to the Supreme Court of the United States, and of the allowance of the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this tenth day of October, A. D. 1883.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 1127. The United States, appellant, vs. Samuel G. Lawton. Court of Claims. Filed 12th October, 1883.

110-146

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, APPELLANTS,
vs.
SAMUEL G. LAWTON. } No.

BRIEF FOR APPELLANTS, UNDER RULE XX.

8669

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, APPELLANTS,
vs.
SAMUEL G. LAWTON. } No.

BRIEF FOR APPELLANTS, UNDER RULE XX.

STATEMENT.

The claimant below, having succeeded to all the rights in and to a tract of land known as Hill Place, in Saint Luke's Parish, South Carolina, applied on the 8th of May, 1882, to the Secretary of the Treasury for any surplus proceeds of the direct tax sale of said property. No action was taken upon this application, and he thereupon brought suit in the Court of Claims.

The findings of fact in that court which are material here are as follows:

> "III. On the 25th day of November, 1862, the direct-tax commissioners of the United States assessed a direct tax upon said Hill Place, amounting to $88.

On the 1st of December, 1863, the said Hill Place was sold for non-payment of the said tax. The amount of the taxes, penalty, interest, and costs was $170.50. The property was struck off for the United States by the tax commissioners for the sum of $1,100, and tax certificate No. 207 was issued therefor, and is now on file in the office of the Commissioner of Internal Revenue, but no money was paid therefor, the tax commissioner having bid in the property for the United States.

IV. "The Board of Tax Commissioners entered upon and took possession of the land in the name of the United States, and from time to time leased the same. The amount realized from such leasing does not appear. The United States are still in possession of 50 acres; the remainder was sold at public sale on the 31st of December, 1875, for $130, under the provisions of the act of June 8, 1872. No application under the acts of 1872, and the supplements thereto, for redemption of this property was ever made."

V. "It does not appear that the claimant ever parted with his interest in the remainder in said tract, except as disposed by said tax sales, or that he ever assigned his right to receive the surplus remaining from the purchase money."

ASSIGNMENT OF ERROR.

The court below erred in entering judgment for claimant instead of dismissing the petition.

ARGUMENT.

Similar claims are pending in the Treasury Department, amounting, as we are informed, to $70,000. As it

was held in the case of the United States *vs.* Taylor (104 U. S., 216) that the statute of limitations runs from the date of demand, and not from the time when the right of demand accrued, the number of claims that may be presented is of course indefinite. On this account, and because the case may be distinguished from that of United States *vs.* Taylor, it has been thought desirable to obtain from the court of last resort a final decision of the questions involved.

It seems that the sixth finding, viz, that no action has been taken by the Secretary of the Treasury upon the application for refund, would be fatal to claimant's case, but that point was not taken below and is not urged here. Defeat of this particular claim on a ground that would be remediable before a new suit is not the purpose of the appeal.

I.

The appellants rely upon section 12 of the act of 1862 (12 Stat., 425), which is as follows:

> SEC. 12. *And be it further enacted*, That the proceeds of said leases and sales shall be paid into the Treasury of the United States, one-fourth of which shall be paid over to the governor of said State wherein said lands are situated, or his authorized agent, when such insurrection shall be put down and the people shall elect a legislature and State officers, who shall take an oath to support the Constitution of the United States, and such fact shall be proclaimed by the President, for the purpose of reimbursing the

> loyal citizens of said State, or such other purpose as said State may direct; and one-fourth shall also be paid over to said State as a fund to aid in the colonization or emigration from said State of any free person of African descent who may desire to remove therefrom to Hayti, Liberia, or any other tropical state or colony.

It was urged in the court below that this section applied only to properties struck off to the United States under section 7 of that act, and did not apply to properties *bought in* under the amendatory act of February 6, 1863 (12th Stat., 640). We submit that the court erred in adopting this view; for when, in February, 1863, Congress amended section 7 of the act of 1862, it did so by substituting the language of the amendment, and after February 6, 1863, the act of 1862 was to be read with the substitution as an integral part.

If this be done the case stands as follows: On 1st day of December, 1863, the day of sale, the owner had not appeared in person before the commissioners and paid the taxes with interest and costs, nor had he requested the property to be struck off to a purchaser for less than two-thirds of the assessed value; and thereupon the commissioners bid in the same for the United States. During sixty days thereafter the owner did not appear before the board, take an oath to support the Constitution of the United States, pay the taxes, penalty, and interest, and redeem the land. (Sec. 7, as amended.) The owner did not, within a year after the sale, satisfy the Board that after June 7, 1862, he had not aided the Rebellion, and did not within such time apply to redeem the land. (Sec. 8, act of 1862). Thereupon the

commissioners, being satisfied that the owner had aban doned the land and had not paid the taxes nor redeemed the land, and that he had left the land to join the rebel forces or to become otherwise engaged in the Rebellion, and being satisfied that the land had been struck off* to the United States, entered upon and took possession of the land, and from time to time leased the same. (Sec. 9, act of 1862). They also made public sale of a portion of the land. (Sec. 4, 5 and 7, act of June 8, 1872; 17 Stat. 331).

And the acts of the commissioners in taking possession and in leasing are decisive that all the facts upon which their right to do so rested were ascertained by them. Their decision in the absence of any controlling provisions is absolutely conclusive as to the existence of those facts. (United States *v.* Wright, 11 Wall., 648; Allen *v.* Blunt, 3 Story, 745.)

In 104 U. S., at page 220, this court has said:

> "The act [of 1862] beginning with section 9, takes up a new subject, which is continued through sections 10 and 11. These relate exclusively to the disposition to be made of lands bought by the United States at the tax sales. They authorized the commissioners under certain circumstances to lease them; or, under the direction of the President, instead of leasing to cause them to be subdivided into parcels, not to exceed 320 acres, and sold. Section 12, which provides that the proceeds of said sales and leases

*NOTE.—"Struck off," it will be observed, is the language used in the amendment to Section 7, where the owner requests sale for less than two-thirds value and also where the sale is to the highest bidder.

> shall be paid into the Treasury, &c., must, we think, be limited to the proceeds of the leases and sales authorized in the three next preceeding sections; such is not only the natural and obvious but also the grammatical construction of the act."

If the acts of 1861 and 1862 should be construed as though passed at the same time (Bennett *vs.* Hunter, 9 Wallace, 362), then *à fortiori*, the amendment of 1863 makes a part of the act of 1862, and section 12 includes properties bought in *after* as well as *before* February 6, 1863. While the court does not, in the case of Taylor, say in so many words that the statutory distribution of the proceeds by section 12 is so inconsistent with section 36 (act of August 5, 1861, 12 Stat., 304) as to work a repeal *pro tanto*, it is clear that such was the view of this court. An illustration will suffice to show the inconsistency. This property was struck off at $1,100, being $929.50 in excess of the amount of taxes, penalty, and interest. If it had been subsequently sold by the United States for the price at which it was struck off, and such would be the natural presumption of the law-maker, there would have been due to the State of South Carolina, under section 12, the sum of $550. So that these statutes which had been passed for purposes of revenue would, on the claimant's theory, have caused payment by the United States of ($929.50 + $550) $1,479.50, as against the $550 retained as half the proceeds; in other words, the taxes would remain unpaid, and the United States would pay out to the claimant the $550 retained, and also $379.50.

II.

The court will take judicial notice of the fact that after the abandonment by the owners of property in the insurrectionary States, and upon such advance of our armies as made execution of the act of 1862 possible, large numbers of the laboring classes, whose support had been derived from these properties, were left to the care of the United States. Unaccustomed to care for themselves, and owning no property, the duty was imposed upon our officers to provide them with labor as well as food. It is in the light of this fact that sections 7 (as amended), 8, 9, 10, and 11 are to be read, and it is this fact which emphasizes the application of section 9 to cases where the owners had abandoned the land. Section 10 was enacted to secure proper and reasonable employment and support, at wages or upon shares, and section 11 secures certain pre-emption rights and affords facilities to loyal citizens and soldiers to purchase upon credit.

So far as subsequent legislation *in pari materia* may be regarded in ascertaining the meaning of the acts of 1861, 1862, and 1863, it is clear that the payment neither of the supposititious surplus nor of the proceeds of sales and leases was intended by Congress, but that the lands were to be treated as *abandoned* to the helpless population.

Section 6 of the act of 1866 ratifies the disposition made by President Lincoln of certain of these lands. (14 Stat., 174.)

Section 7 of the act of 1866 provides for a disposal of the land in the parishes of Saint Luke and Saint Helena,

in South Carolina, at $1.50 per acre, to certain persons occupying the same under the field-order of General Sherman. (*Ib.*, 175.)

Section 8 provides that the proceeds of certain sales shall be invested in United States bonds, and the interest devoted to educational purposes. (*Ib.*, 175.)

Section 9 provides for leasing to certain persons tracts of twenty acres for six years. (*Ib.*, 175.)

Section 1 of the act of June 8, 1872, provides for redemption by the owners without requiring the repayment to the United States of any sum which the owners might have received as surplus. (17 Stat., 330.)

Section 6 provides that the proceeds of sale of the school farm lands shall be devoted to educational purposes. (*Ib.*, 332.)

Section 8 restores to the county of Beaufort the court-house, and releases all claims against it. (*Ib.*, 338.)

III.

It was said in the case of Taylor (104 U. S., 219): "In case the United States became the buyers, of course there was no surplus." It was said by the court below that this language was used solely with reference to the seventh section of the act of 1862 as it stood prior to the amendment of 1863. This may or may not be so, but the fact that the sale of the Taylor property was made in May, 1865, would lead to the opposite inference. Many strong and equitable considerations may be urged to prove that the books of the Treasury ought to show that money was taken from the Treasury, and that a part thereof was

applied to payment of taxes, &c., and the rest held in custody to await the claim of the owner. But the law did not require the officers of the Treasury to do this, and therefore there can be no legal presumption that it was done. Indeed the omission of Congress to make such provision is strong evidence that they did not mean to treat the difference between the taxes and the amount bid as being *a surplus*. Section 7, as amended, makes special provision that the purchaser who had paid moneys, Treasury notes, and certificates of indebtedness, should have the same returned to him in case of redemption; thus indicating that there might be a purchaser (viz, The United States) who would pay nothing and set aside nothing. Crussell's case, 14th Wallace, 1, has been explained to mean that the presumption that public officers have done their duty does not supply proof of a substitutive fact. (United States *vs.* Ross, 92 U. S., 284.)

Congress seemed to be of opinion that when they offered to owners two opportunities to redeem, one in sixty days and the other in one year, they had given ample remedy to people who had voluntarily abandoned their lands, entered into the rebellion, and turned over their employés to the care of the United States, and that if they did not choose to avail themselves of their privileges the property should be for the time devoted to the subsistence of the abandoned servants, and that ultimately the proceeds of sales and leases should be appropriated, one-half to educational and colonization purposes, and the other half to the payment of the taxes and reimbursement of the expenditures by the United States.

In conclusion there is no *surplus* in the Treasury of the United States; there is no evidence as to the amount received from *leases*, and the cash received from *sales* does not equal the taxes, penalty, and interest, and therefore there is nothing for claimant to recover.

JOHN S. BLAIR,
Assistant Attorney.

S. F. PHILLIPS,
Solicitor General.

LIST OF STATUTES RELATING TO DIRECT TAXES.

Act of August 5, 1861, 12 Stat., 292.
Act of June 7, 1862, 12 Stat., 422.
Section 119, act of July 1, 1862, 12 Stat., 489.
Act of July 17, 1862, 12 Stat., 600.
Act of February 6, 1863, 12 Stat., 640.
Sections 47, 173, 175, act of June 30, 1864, 13 Stat., 240, 303, 304.
Act of July 1, 1864, 13 Stat., 331.
Act of July 1, 1864, 13 Stat., 332.
Act of March 3, 1865, 13 Stat., 501.
Act of July 16, 1866, 14 Stat., 173.
Section 14, act of July 28, 1866, 14 Stat., 331.
Resolution of February 25, 1867, 14 Stat., 568.
Section 3 of joint resolution of March 26, 1867, 15 Stat., 23.
Act of February 21, 1867, 15 Stat., 36.
Act of July 20, 1868, 15 Stat., 123.
Joint resolution of July 23, 1868, 15 Stat., 260.
Act of May 9, 1872, 17 Stat., 89.
Act of June 8, 1872, 17 Stat., 330.
Act of March 3, 1873, 17 Stat., 600.

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110-146

In Supreme Court of the United States.

APPEAL FROM THE COURT OF CLAIMS.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

SAMUEL J. LAWTON, DEFENDANT IN ERROR.

DIRECT TAXES IN SOUTH CAROLINA.

WM. E. EARLE,
Attorney for Defendant in Error,
10, 11 AND 12 CORCORAN BUILDING.

ROTHROCK, PRINTER, 1414 F ST.

In the Supreme Court.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

SAMUEL J. LAWTON, DEFENDANT IN ERROR.

APPEAL FROM THE COURT OF CLAIMS.

Argument of Mr. Earle.

This action was brought in the Court of Claims to recover the surplus proceeds of a sale for direct taxes made under the act of February 6, 1863, which is a "substitute" for section 7 of the act of June 7, 1862, at which sale the United States bought the land. It rests entirely upon this "substitute" of February 6, 1863, and section 36 of the act of August 5th, 1861.

It is NOT for "the proceeds of the leasing and ultimate sale," or the resale made on behalf of the Government after it acquired title. It is, therefore, unaffected by the provisions of sections 11 and 12 of the act of 1862, and sections 6, 7, 8 and 9 of the act of 1866, or by those of sections 1, 6 and 8 of the act of 1872.

The act of June 7, 1862 (12 Stat., 422) provides for the collection of direct taxes in insurrectionary districts.

Section 7 thereof provided that if the tax was not paid within 60 days after the amount thereof had been fixed by the commissioners then the same might be advertised and sold.

The act of February 6, 1863 (12 Stat., 640) *substituted* a a section for this and with this material difference to wit: "The said commissioners shall be authorized at said sale to bid off the same for the U. S. at a sum not exceeding two-thirds of the assessed value thereof, unless some person shall bid a larger sum."

By the statute the commissioners were required to adopt the assessment of the State.

History of these Sales.

In South Carolina the lands sold were, except the lots in the town of Beaufort, valuable plantations, and most of them specially adapted to the production of the long, silky staple, Sea Island cotton. But the agricultural lands in South Carolina under the State system paid a very small portion of the taxes, as we shall see more fully hereafter. Though they were taxed at a higher rate per cent. the difference was in the assessment, which was not *ad valorem*, but was based upon a classification at fixed rates, established by statute in 1815, which was arbitrary and purely artificial, resting solely on political grounds. This system was continued of force until the abolition of the parish system at the close of the war between the States. Of this mode of appraisement and assessment the Comptroller-General of the State says in his annual report for 1859:

"The present system of taxation is strikingly unequal in its operation. Some of the most valuable and pro-

ductive cotton lands of the State are returned as valued at twenty cents an acre according to the classification of 1815, when in many instances twenty dollars would be refused for them. Consequently landed estates worth ten thousand dollars pay into the treasury a less amount of taxation than is paid for a superannuated negro.

Now, upon this nominal valuation, property appraised at $101,934 was sold to individuals for $28,232.29 to pay taxes, penalties, &c., amounting to $3,424.18.

That in addition thereto other lands were sold; and under the provisions of section 7 of the act of June 7, 1862, as amended February 6, 1863, that "the said commissioners shall be authorized at said sale to bid off the same for the United States at a sum not exceeding two-thirds of the assessed value thereof, unless some person shall bid a larger sum," the said commissioners bid off land appraised at $797,092 under this same nominal valuation, for $77,501.18, to pay taxes and penalties amounting $16,988.76 only.

In the statement made by the Treasury the proceeds are set down as only $24,754.43. This is only the difference between the amounts at which individuals bid off lands and the taxes, costs, and penalties thereon. This is upon the theory that under the act of Congress these lands were forfeited to the Government upon the failure to pay the taxes thereon, and that the commissioners could, by out-bidding individuals up to two-thirds of the appraised value, acquire the property for the Government and avoid paying *anything* to the owner.

A portion of them have been re-sold by the Government. I may be permitted to say in passing, for the sum of $315,677.86 in money. Besides there remain 2,560 acres unsold as yet. But for the difference between the dues, to wit: $16,988.76, and the price the Government

gave, to wit: $77,501.18, the Secretary of the Treasury refuses to account in any way.

The case now before you fully illustrates these sales.

The Hill Place, containing 1,100 acres, was appraised at $4,400; the tax was $88; the penalty, $44; costs, $19.80; interest, $18.70, making $170.50. The property was bid off by the Government for $1,100. If, therefore, this interest was lawfully calculated from July 1, 1862, the surplus proceeds amount to $929.50.

It is true the Secretary of the Treasury says in his answer to a call for information from the Court of Claims, that this tract of 1,100 acres, except about 50 acres reserved for a light-house, was sold to Cæsar Parmelle for $130. This is not material except to show what a bargain Mr. Parmelle got, and that the Commissioners made the sale to him in violation of the plain provisions of section 11 of the act of June 7, 1872.

Section 36 of the act of August 5th, 1861, provides in case of the failure to pay the taxes, &c., that "the whole of such property shall be sold, and the surplus of the proceeds of the sale after satisfying the tax, costs, charges and commissions, shall be paid to the owner of the property, or his legal representatives; or, if he or they cannot be found, or refuse to receive the same, then such surplus shall be *deposited* in the Treasury of the United States, to be *there held for the use* of the owner or his legal representatives *until* he or they shall make *application* therefor to the Secretary of the Treasury, who upon such application shall, by warrant on the Treasury, cause the same to be paid to the applicant."

It is true the land of the Defendant in Error was sold under the act of February 6, 1863, but in Bennett *vs.* Hunter, 9 Wall. 326, it is decided that this act and that of August 5, 1861, are *pari materia*; and in U. S. *vs.*

Taylor, it is expressly held that this 36th section is not repealed by the act of February 6, 1863, and that they are to be construed together.

This section 36 of the act of August 5th, 1861, is not repealed by any of the provisions of section 5,596 of the R. S.

And even if it were, the rights of parties, "any right accrued or accruing," are saved by the express language of section 5,597.

The Government's Position.

It is undisputed that under the decision of this Court in United States *vs.* Taylor, construing section 36 of the act of August 5, 1861, "the owner or his legal representatives" would be entitled to receive these "surplus proceeds" if the purchaser had been an individual; yet the position is that the Government being the purchaser, the owner loses his estate absolutely, though the commissioners may have bid but a dollar more than the next highest bidder who was an individual. Surely this is not, and will never be, held to be the law. This Court says "the statute of June 7, 1862, was an act for the collection of direct taxes in insurrectionary districts. It was *not* a confiscation act." But the court was mistaken if it be true that the commissioners, by a mere exercise of their personal discretion, could bid a trifle over all individual bidders, vest the title in the Government, and avoid any reimbursement to the owner, whilst it sub lividied the lands and sold them out upon a speculation, making the gross receipts net profits.

Before we impute to the Government such wrong as inevitably follows this suggestion, let us look more closely at the law. It is true that section 4 of the act of June 7, 1862, does provide that if the tax is not paid, &c., the

title shall be forfeited; but the question of forfeiture, under this very section, has been before the Supreme Court, and it was held that "a sale, as prescribed by the act, is necessary to transfer title." (Bennett *vs.* Hunter, 9 Wall., 326; also United States *vs.* Taylor, 104 U. S.) Then the title passed by the sale from the owner to the purchaser direct, and was effected by the sale, and it must be that the only title acquired by the Government was by *purchase*. If a purchaser, then the Government pays just as another purchaser would. If the Government did not not thus acquire title, and is not bound to pay for it, then the rights of claimant are not divested, and that position is not tenable by the Government, as it has re-sold these lands, and for a sum largely in excess of the prices at which they were bid off.

The Government a Purchaser or Trustee.

The Government was either a *bona fide* purchaser under the statutes, or the lands were bid in for the taxpayer.

If a *bona fide* purchaser, the taxes due should have been at once paid out of the proceeds of sale, and under section 36 the surplus proceeds should have been held "in trust" for payment to "the owner or his legal representatives."

If the lands were merely *bid in* and not *bona fide* sold, then upon the resales the taxes should have been paid, and *this balance* belongs to the owner.

These propositions would seem to be self-evident, but they are irreconcilably in conflict with the answer made to the petition of the claimants. In order to see the full scope of the effect of this answer, let us look at a few salient facts.

It is not necessary to the refutation of this position that we should consider section 3 of article III of the Constitution, and the various decisions of the Supreme Court under it. It is a part of the history of the times which produced this legislation that when Congress passed the act of July 7, 1862, "to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," President Lincoln at once prepared the draft of a message objecting to its provisions, which might be construed to result "in the divesting of title forever," and that he only approved that act because Congress adopted at once a joint resolution construing it on this point. (*Vide* Bigelow *vs.* Forrest, 9 Wall., 341.) Though at the common law an alien cannot take by descent, this Court by Mr. Justice Story, says of such title in the Commonwealth, that "it is inchoate and imperfect; to be consummated by an actual entry under inquest of office." (7 Cranch, 627.)

These lands were bid off to the Government under the substitute of February 6, 1863, for section 7 of the act of June 7, 1862. This substitute allowed the commissioners to bid not exceeding two-thirds the appraised value. The act of June 7, 1862, allowed them only to bid "the taxes, penalty, costs, and ten per centum interest," and in considering this last (sec. 7 of the act of June 7, 1862,) this Court says in United States *vs.* Taylor, "in case the United States became the buyer, there was, of course, no surplus." "This was mathematically true; but when the Government bought property under the substitute (of Feb'y 6, 1863) for hundreds of dollars, when there were only a few dollars tax due upon it, there was a surplus, of course, and another remark of the Court in the case last quoted, to wit, that "the statute of

June 7, 1862, was an act for the collection of direct taxes in insurrectionary districts. It was not a confiscation act," became *apropos* to the answer here made to the claimants. If merely because $16.988.78 of taxes, costs, penalties and interest are not paid the day they are alleged to have become due, the Government can out-bid all individuals, and by bidding $77.561.18 can buy property at a nominal valuation appraised at $797,092, and then refuse to pay to the owner the difference between the demand and the bid, confiscation can be accomplished by wholesale, and without the formality of proceeding in court.

The Forfeiture Provision.

The only ground, then, upon which the surplus proceeds of those sales, whereat the Government became the purchaser, can be withheld from the original owners is, that these lands were absolutely forfeited under the operation of the 4th section of the act of June 7, 1862 That ground seemed to have been entirely removed by the decisions of this Court in Bennett *vs.* Hunter, and U. S. *vs.* Taylor; but the theory of the Treasury Department seems so absolutely fixed on the subject of forfeitures, and what might be effected through them, that this case has been rendered necessary, and I may, therefore, be excused for somewhat elaborating a point which seems to me to be *res adjudicata.*

The provision of that section (4) is merely that the *title* shall be forfeited, and "upon the sale thereinafter provided for, shall vest in the United States or in the purchasers at such sale." This provision of this section should be read in immediate connection with the two which precede it, and with the light they cast upon it. Section 2 provides that every piece of land "shall

become charged respectively with their respective portions of said direct tax, and the same with the penalty shall be a lien thereon." The mode of enforcing this penalty and of thelien which is thus charged, is by the sale provided for in section 7.

Section 3 provides that "said lands shall be discharged from said tax" by payment thereof within sixty days after the commissioner shall have fixed the amount.

Please note that neither provides or requires the payment of any penalty. Nor does either provide for payment of interest. But section 7 provides for a sale for taxes, penalty, and costs, and ten per centum interest on said tax *pursuant to said notice*" of sale.

This mere declaration of forfeiture (in section 4) then, did not divest the interest of the owner, but it provided for the transfer of the title by a sale, and subsequent provisions (section 36) are made for the protection of his interests in the proceeds of that sale which should be in excess of his liabilities.

A sale was necessary to the forfeiture then. And section 7 provided for that sale. Then the unrepealed section 36 of the act of August 5th, 1861, provided what should be done with the proceeds of such sales, and it makes no distinction between the proceeds of the sales where individuals were purchasers and those where the commissioners bid two-thirds of the valuation as authorized by the substitute, nor those provided for in the same section of the same act, where the commissioners were required to *bid* without limitation "under the direction of the President."

The Treasury Department may well be asked for the law which makes a distinction as to the disposition of the surplus proceeds of those sales at which individuals

bought, and those whereat the Government became the purchaser. And it is worthy of notice that at the sale provided for in section 36 of the General Act of August 5th, 1861, there is no provision whatever for the Government purchasing nor the commissioners "bidding in." Nor is there any such provision in the first act (June 7th, 1862) for the enforcement of the tax in insurrectionary districts. But a few months of observation, and before any sales were made, it was patent that the interests of the owners would be absolutely sacrificed, unless the Government could bid more than the mere tax and costs.

Section 7 of the act relating to insurrectionary districts (June 7, 1862,) provided for the commissioners bidding only the tax and charges on each piece of land, and was clearly for the protection of the Government. The substitute for it passed Feb'y 6, 1863, authorized the commissioners to bid two-thirds of the appraised value. This extension of the limit was not intended, because not needed, for the protection of the Government. It was not for the purpose of securing to the Government lands wanted for public use, because the last provisions of the same section authorized the purchase without limitation of price "under the direction of the President," "of such tracts, lots or parcels" as were wanted "for Government use." It is very clear that this was simply a humane provision of the law for the protection of the original owners within the discretion of the commissioners to the extent of two-thirds of the appraised value of their property. And yet one of the executive departments would at this late day, by an unreasonable and forced construction, deprive these parties of this waif from the wreck.

Penal statutes are to be strictly construed. Such is the

reasonable and humane policy of the law. They must be complete, and therefore nothing can be inferred in their aid—nothing can be taken by intendment.

The penalty must be specifically declared, and the time and mode of enforcement must be prescribed in terms which are free from ambiguity and doubtful construction. Penalties and forfeitures are subject to the same rules in this regard.

The very wording of the 4th section, as well as the provision of the 36th section of the previous act disposing of the proceeds of all the sales, and to which this was really only a supplemental act, are all incompatible with the theory that Congress intended the Government should make a confiscation law out of a mere tax act. But this question seems really to have been decided by this Court. In Bennett *vs.* Hunter, 9 Wall., the Chief Justice, delivering the opinion of the Court, says that it cannot be done "without an inquisition of record, or some public transaction equivalent to office found. It is certainly proper to assume that an act of sovereignty so highly *penal* is not to de inferred from language capable of any milder construction."

And, again, in The U. S. *vs.* Taylor, after a full consideration of the various acts which bore upon the subject of the surplus proceeds of the sale, this Court uses the following language:

"A construction should be given to these statutes which would be consistent with good faith on the part of the United States. It would certainly not be fair dealing for the Government to say to the owner of lands sold for taxes, that the surplus proceeds should be *held* in the *Treasury* for an indefinite period for *his use*, or that of his legal representatives, and, then, upon suit brought to recover such proceeds, to plead in bar that the demand

therefor had not been made within six years." And it goes on to discuss and to treat these surplus proceeds of sale under section 36 as a trust fund, against the collection of which the statute could not be pleaded until after the trust had been repudiated for six years.

WAS AN APPROPRIATION NECESSARY?

In the consideration of the scope and effect of this (36) section, the Court says in U. S. *vs.* Taylor, it required the surplus proceeds of sale "to be *deposited* in the Treasury, to be there *held* for the *use* of the owner or his legal representatives *until* he or they should make application therefor," &c. There can be no mistake as to the meaning of this language. "Deposited" don't mean "paid." The money never went, and can never be said legally to have gone into the Treasury as revenue goes into the Treasury. It was "deposited" there, and it was there "held for the use of the owner." It did not go there as unexpended balances of appropriations do by law at the end of two years. It was not "covered into the Treasury" by law. It was as a "deposit"; and a deposit "held for the use of the owner," and the Court says it was to be held there until that owner "should make application" for it. Now, the idea that this money went into the Treasury as revenue does, or was "covered into the Treasury," or became money of the Government in any way, manner, or sense, so as to need an appropriation or further legislation of any kind, before it could be applied to the purpose for which it was held in trust is absolutely put at rest by the following language of this Court: "Whenever the owner of the land or his legal representatives should apply for the money, it was the duty of the Secretary to draw his warrant therefor without regard to the period which had elapsed since the sale."

THE SPIRIT AND PURPOSE OF THIS PROVISION.

The spirit, scope, and purpose of these direct tax laws was wholly misconceived by some of the Commissioners and many other executive officers. "The collection of direct taxes" was totally distinct from "confiscation."

The raising of revenue, even to carry on the war, was not intended to be made a mode of punishing treason. It would be a very forced construction to place on these tax laws, that Congress intended to do by indirection what it so clearly had the right and power to do by direct legislation, and especially when it expressly exercised that power in such other and specific legislation. The spirit of the laws, just as much as their language, has been construedby this Court. There is no point or feature of this legislation which better illustrates its true spirit than the provision of suction 36, as to "the surplus proceeds of sale," and that of the 4th section of the act of February 25, 1867, enacted after the work was all done, and which provided, without limitation, for the correction of all errors by requiring that the Secretary of the Treasury shall refund money "received of them without warrant of law, as in payment of dues under the direct tax laws," whenever "satisfactory evidence of the illegal collection" is presented to him.

Now, on February 25, 1867, Congress knew that besides the sales to private purchasers, the Government had, at merely nominal prices, "purchased in" 52,000 acres of land in South Carolina alone, as shown by its act approved July 16, 1866. These Commissioners, who had to administer this new and unconstrued system, broadly comprehensive and necessarily complicated, would have been more than human if they had not made errors.

Congress recognized this fact, and in section 4 of this act (of February 25, 1867,) provides as follows:

"That the Secretary of the Treasury shall be authorized to refund to persons from whom money has been received without warrant of law, as in payment of dues under the direct tax laws, the sums so illegally collected; such refunding to be ordered on the presentation, in each case, of satisfactory evidence of the illegal collection."

And in section 3,689 of the R. S., a permanent annual appropriation is made to carry out this provision.

The one act provided for a contingency which it was morally certain *would* happen. The other provided for a fact which, in the very nature of things, and to a moral certainty, *had* happened. Both acts are remedial. Both require the exercise of his judgment judicially, at the same time that they devolve upon him a ministerial or executive duty.

Under the provisions of section 7, (the substitute) of the act of February 6, 1863, as well as under section 36 of the act of August 5, 1861, Congress knew there would be "surplus proceeds" and it provided for their final disposition.

I do not propose to try by equitable considerations to argue away the force of a "statute of repose." In view of the plain decisions of this Court, I am not reduced to any such strait. "Every statute, for the continuance of which no time is limited, is perpetual, although it be not expressly declared to be so." Dwarris, p. 150.

This is a remedial statute, and as such to be liberally construed; and I stand upon the broad ground that this

provision of the statute recognized the probability that there would be surplus proceeds from Government purchases as well as from those made by individuals, and that Congress therefore left of full force the provisions for their payment to the original owners, wholly without limitation except when the party "should make application;" and all of these provisions you have said, "must be construed together as a part of a system," and meant to give a perpetual remedy therefor and treated it in analogy to a trust.

Wm. E. Earle

J. J. Darlington